

1 LARIVIERE, GRUBMAN & PAYNE, LLP
2 Robert W. Payne, Esq. (Bar No. 073901)
3 Email: rpayne@lgpatlaw.com
4 Scott J. Allen, Esq. (Bar No. 178925)
5 Email: sallen@lgpatlaw.com
Post Office Box 3140
19 Upper Ragsdale Drive
Monterey, CA 93942-3140
Telephone: (831) 649-8800
Facsimile: (831) 649-8835

E-FILED 09-20-2010

Attorneys for Plaintiff/Counter-Defendant
LIFT-U, A DIVISION OF HOGAN MFG., INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LIFT-U, A DIVISION OF HOGAN MFG., INC., a) Case No: 5:10-cv-01850-LHK
California corporation.)

Plaintiff,
vs.
RICON CORP., a California corporation, and
WESTINGHOUSE AIR BRAKE TECHNOLOGIES
CORPORATION dba VAPOR BUS
INTERNATIONAL, a Delaware corporation.
)

) **STIPULATED PROTECTIVE
ORDER FOR LITIGATION
INVOLVING PATENTS,
HIGHLY SENSITIVE
CONFIDENTIAL
INFORMATION AND/OR
TRADE SECRETS**

Defendants.)
) **(MODIFIED BY THE COURT)**

RICON CORP., a California corporation.

Counter-Claimant.

VS

LIFT-U, A DIVISION OF HOGAN MFG., INC., a California corporation

Counter Defendant

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
 3 confidential, proprietary, or private information for which special protection from public
 4 disclosure and from use for any purpose other than prosecuting this litigation may be
 5 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
 6 following Stipulated Protective Order. The parties acknowledge that this Order does not confer
 7 blanket protections on all disclosures or responses to discovery and that the protection it
 8 affords from public disclosure and use extends only to the limited information or items that are
 9 entitled to confidential treatment under the applicable legal principles. The parties further
 10 acknowledge, as set forth in Section 13.3, below, that this Stipulated Protective Order does not
 11 entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the
 12 procedures that must be followed and the standards that will be applied when a party seeks
 13 permission from the court to file material under seal.

16 2. DEFINITIONS

17 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
 18 information or items under this Order.

19 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
 20 generated, stored or maintained) or tangible things that qualify for protection under Federal
 21 Rule of Civil Procedure 26(c), including, but not limited to, proprietary business information or
 22 the personal or financial information of a party or non-party.

24 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel
 25 (as well as their support staff).

1 2.4 Designating Party: a Party or Non-Party that designates information or items
 2 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or
 3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

4 2.5 Disclosure or Discovery Material: all items or information, regardless of the
 5 medium or manner in which it is generated, stored, or maintained (including, among other
 6 things, testimony, transcripts, and tangible things), that are produced or generated in
 7 disclosures or responses to discovery in this matter.

9 2.6 Expert: a person with specialized knowledge or experience in a matter
 10 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an
 11 expert witness or as a consultant in this action, (2) is not a past or current employee of a Party
 12 or of a Party’s competitor, and (3) at the time of retention, is not anticipated to become an
 13 employee of a Party or of a Party’s competitor.

15 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
 16 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another
 17 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
 18 less restrictive means, including, but not limited to, information that the Producing Party deems
 19 especially sensitive such as confidential research and development, financial, technical,
 20 marketing, and other sensitive trade secret information, proprietary business information or the
 21 personal or financial information of a party or non-party, or information capable of being
 22 utilized for the preparation or prosecution of a patent application dealing with such subject
 23 matter of the case.

25 2.8 House Counsel: attorneys who are employees of a party to this action. House
 26 Counsel does not include Outside Counsel of Record or any other outside counsel.

1 2.9 Non-Party: any natural person, partnership, corporation, association, or other
2 legal entity not named as a Party to this action.

3 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
4 action but are retained to represent or advise a party to this action and have appeared in this
5 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
6 that party.

7 2.11 Party: any party to this action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (and their support
9 staffs).

10 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
11 Material in this action.

12 2.13 Professional Vendors: persons or entities that provide litigation support
13 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations,
14 and organizing, storing, or retrieving data in any form or medium) and their employees and
15 subcontractors.

16 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
17 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

18 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from
19 a Producing Party.

20 3. SCOPE

21 The protections conferred by this Stipulation and Order cover not only Protected
22 Material (as defined above), but also (1) any information copied or extracted from Protected
23 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3)

1 any testimony, conversations, or presentations by Parties or their Counsel that might reveal
 2 Protected Material. However, the protections conferred by this Stipulation and Order do not
 3 cover the following information: (a) any information that is in the public domain at the time of
 4 disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a
 5 Receiving Party as a result of publication not involving a violation of this Order, including
 6 becoming part of the public record through trial or otherwise; and (b) any information known
 7 to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the
 8 disclosure from a source who obtained the information lawfully and under no obligation of
 9 confidentiality to the Designating Party. Any use of Protected Material at trial shall be
 10 governed by a separate agreement or order.

12 4. DURATION

13 Even after final disposition of this litigation, the confidentiality obligations imposed
 14 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a
 15 court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal
 16 of all claims and defenses in this action, with or without prejudice; and (2) final judgment
 17 herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or
 18 reviews of this action, including the time limits for filing any motions or applications for
 19 extension of time pursuant to applicable law. **For a period of six months after the final disposition**
 20 **of this litigation, this court shall retain jurisdiction to enforce the terms of this order.**

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
 23 Party or Non-Party that designates information or items for protection under this Order must
 24 take care to limit any such designation to specific material that qualifies under the appropriate
 25 standards. To the extent it is practical to do so, the Designating Party must designate for
 26 standards. To the extent it is practical to do so, the Designating Party must designate for
 27 standards. To the extent it is practical to do so, the Designating Party must designate for
 28 standards. To the extent it is practical to do so, the Designating Party must designate for

1 protection only those parts of material, documents, items, or oral or written communications
 2 that qualify – so that other portions of the material, documents, items, or communications for
 3 which protection is not warranted are not swept unjustifiably within the ambit of this Order.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
 5 shown to be clearly made for an improper purpose (e.g., to unnecessarily encumber or retard
 6 the case development process or to impose unnecessary expenses and burdens on other parties)
 7 expose the Designating Party to sanctions.

8 If it comes to a Designating Party's attention that information or items that it
 9 designated for protection do not qualify for protection at all or do not qualify for the level of
 10 protection initially asserted, that Designating Party must promptly notify all other parties that it
 11 is withdrawing the mistaken designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this
 13 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
 14 ordered, Disclosure or Discovery Material that qualifies for protection under this Order must
 15 be clearly so designated before the material is disclosed or produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (e.g., paper or electronic documents, but
 18 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
 19 Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
 20 EYES ONLY” to each page that contains protected material. To the extent practicable, if only
 21 a portion or portions of the material on a page qualifies for protection, the Producing Party also
 22 should clearly identify the protected portion(s) (e.g., by making appropriate markings in the
 23 margins) and specify, for each portion, the level of protection being asserted.

1 A Party or Non-Party that makes original documents or materials available for
2 inspection need not designate them for protection until after the inspecting Party has indicated
3 which material it would like copied and produced. During the inspection and before the
4 designation, all of the material made available for inspection shall be deemed "HIGHLY
5 CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified
6 the documents it wants copied and produced, the Producing Party must determine which
7 documents, or portions thereof, qualify for protection under this Order. Then, before producing
8 the specified documents, the Producing Party must affix the appropriate legend
9 ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY") to
10 each page that contains Protected Material. To the extent practicable, if only a portion or
11 portions of the material on a page qualifies for protection, the Producing Party also should
12 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins)
13 and specify, for each portion, the level of protection being asserted.
14

15 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
16 Designating Party identify on the record, before the close of the deposition, hearing, or other
17 proceeding, all protected testimony and specify the level of protection being asserted. When it
18 is impractical to identify separately each portion of testimony that is entitled to protection and
19 it appears that substantial portions of the testimony may qualify for protection, the Designating
20 Party may invoke on the record (before the deposition, hearing, or other proceeding is
21 concluded) a right to have up to 21 days to identify the specific portions of the testimony as to
22 which protection is sought and to specify the level of protection being asserted. Only those
23 portions of the testimony that are appropriately designated for protection within the 21 days
24 shall be covered by the provisions of this Stipulated Protective Order. Alternatively, a
25
26
27
28

Designating Party may specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the entire transcript shall be treated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

Parties shall give the other parties notice if they reasonably expect a deposition, hearing or other proceeding to include Protected Material so that the other parties can ensure that only authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

Transcripts containing Protected Material shall have an obvious legend on the title page that the transcript contains Protected Material, and the title page shall be followed by a list of all pages (including line numbers as appropriate) that have been designated as Protected Material and the level of protection being asserted by the Designating Party. The Designating Party shall inform the court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually designated.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. If only a portion or portions of the information or item warrant protection, the Producing Party, to

1 the extent practicable, shall identify the protected portion(s) and specify the level of protection
2 being asserted.

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
4 designate qualified information or items does not, standing alone, waive the Designating
5 Party's right to secure protection under this Order for such material. Upon timely correction of
6 a designation, the Receiving Party must make reasonable efforts to assure that the material is
7 treated in accordance with the provisions of this Order.

8 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
10 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
11 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
12 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
13 challenge a confidentiality designation by electing not to mount a challenge promptly after the
14 original designation is disclosed.

15 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
16 process by providing written notice of each designation it is challenging and describing the
17 basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the
18 written notice must recite that the challenge to confidentiality is being made in accordance with
19 this specific paragraph of the Protective Order. The parties shall attempt to resolve each
20 challenge in good faith and must begin the process by conferring directly (in voice to voice
21 dialogue; other forms of communication are not sufficient) within 14 days of the date of
22 service of notice. In conferring, the Challenging Party must explain the basis for its belief that
23 the confidentiality designation was not proper and must give the Designating Party an
24 opportunity to respond. The parties shall then file a joint letter to the Court certifying that
25 they have resolved the challenge or that they are unable to do so. The parties shall file the
26 letter within 14 days of the date of service of notice. The letter shall be filed under seal and
27 shall not be served on the other party. The letter shall be filed with the Clerk of the Court and
28 shall be docketed as a motion to the Court.

1 opportunity to review the designated material, to reconsider the circumstances, and, if no
2 change in designation is offered, to explain the basis for the chosen designation. A Challenging
3 Party may proceed to the next stage of the challenge process only if it has engaged in this meet
4 and confer process first or establishes that the Designating Party is unwilling to participate in
5 the meet and confer process in a timely manner.
6

7 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
8 intervention, the Challenging Party shall file and serve a motion to contest confidentiality
9 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within
10 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet
11 and confer process will not resolve their dispute, whichever is earlier. Each such motion must
12 be accompanied by a competent declaration affirming that the movant has complied with the
13 meet and confer requirements imposed in the preceding paragraph.
14

15 The burden of persuasion in any such challenge proceeding shall be on the
16 Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to
17 harass or impose unnecessary expenses and burdens on other parties) may expose the
18 Challenging Party to sanctions. All parties shall continue to afford the material in question the
19 level of protection to which it is entitled under the Producing Party's designation until the court
20 rules on the challenge.
21

22 7. ACCESS TO AND USE OF PROTECTED MATERIAL

23 7.1 Basic Principles. A Receiving Party may use Protected Material that is
24 disclosed or produced by another Party or by a Non-Party in connection with this case only for
25 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
26 disclosed only to the categories of persons and under the conditions described in this Order.
27
28

1 When the litigation has been terminated, a Receiving Party must comply with the provisions of
2 section 14 below (FINAL DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at a location
4 and in a secure manner that ensures that access is limited to the persons authorized under this
5 Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
8 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
9 disclose any information or item designated "CONFIDENTIAL" only to:

10 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
11 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose
12 the information for this litigation and who have signed the "Acknowledgment and Agreement
13 to Be Bound" that is attached hereto as Exhibit A;

15 (b) up to two (2) officers, directors, or employees (including House Counsel) of the
16 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
17 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

18 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
19 reasonably necessary for this litigation and who have signed the "Acknowledgment and
20 Agreement to Be Bound" (Exhibit A) (the Receiving Party must provide a copy of the signed
21 "Acknowledgement and Agreement to Be Bound" (Exhibit A) to the Designating Party prior to
22 the disclosure);

24 (d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

(b) Experts (as defined in this Order) of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a), below, have been followed;

1 (c) the court and its personnel;
2 (d) court reporters and their staff, professional jury or trial consultants, and
3 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
4 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and
5 (e) the author or recipient of a document containing the information or a custodian or
6 other person who otherwise possessed or knew the information.

7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

10 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating
11 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or
12 item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
13 pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1)
14 identifies the Expert and provides to the Designating Party a copy of the resume or curriculum
15 vitae of the Expert that includes any current and past consulting relationships of the Expert in
16 the industry, and (2) certifies that the Expert is not a current director, officer, employee or
17 consultant to any competitor of the Designating Party or currently anticipates becoming an
18 officer, director or employee or consultant of any such competitor.

19
20 (b) A Party that makes a request and provides the information specified in the
21 preceding respective paragraphs may disclose the subject Protected Material to the identified
22 Expert unless, within 5 days of delivering the request, the Party receives a written objection
23 from the Designating Party. Any such objection must set forth in detail the grounds on which it
24 is based.

(c) A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion must describe the circumstances with specificity, set forth in detail the reasons why the disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means that could be used to reduce that risk. In addition, any such motion must be accompanied by a competent declaration describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-

Party;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating

1 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies
 2 of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures
 3 were made of all the terms of this Order, and (d) request such person or persons to execute the
 4 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

5 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
 6 PROTECTED MATERIAL

7 When a Producing Party gives notice to Receiving Parties that certain inadvertently
 8 produced material is subject to a claim of privilege or other protection, the obligations of the
 9 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
 10 provision is not intended to modify whatever procedure may be established in an e-discovery
 11 order that provides for production without prior privilege review. Pursuant to Federal Rule of
 12 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of
 13 a communication or information covered by the attorney-client privilege or work product
 14 protection, the parties may incorporate their agreement in the stipulated protective order
 15 submitted to the court.

16 12. MISCELLANEOUS

17 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
 18 person to seek its modification by the court in the future.

19 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
 20 Order no Party waives any right it otherwise would have to object to disclosing or producing
 21 any information or item on any ground not addressed in this Stipulated Protective Order.
 22 Similarly, no Party waives any right to object on any ground to use in evidence of any of the
 23 material covered by this Protective Order.

1 12.3 Filing Protected Material. Without written permission from the Designating
2 Party or a court order secured after appropriate notice to all interested persons, a Party may not
3 file in the public record in this action any Protected Material. A Party that seeks to file under
4 seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may
5 only be filed under seal pursuant to a court order authorizing the sealing of the specific
6 Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only
7 upon a request establishing that the Protected Material at issue is privileged, protectable as a
8 trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to
9 file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court,
10 then the Receiving Party may file the Protected Material in the public record pursuant to Civil
11 Local Rule 79-5(e) unless otherwise instructed by the court.
12

13 14. FINAL DISPOSITION

15 Within 60 days after the final disposition of this action, as defined in paragraph 4,
16 each Receiving Party must return all Protected Material to the Producing Party or destroy such
17 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
18 compilations, summaries, and any other format reproducing or capturing any of the Protected
19 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
20 submit a written certification to the Producing Party (and, if not the same person or entity, to
21 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
22 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the
23 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other
24 format reproducing or capturing any of the Protected Material. Notwithstanding this provision,
25 Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition,
26
27
28

1 and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
2 reports, attorney work product, and consultant and expert work product, even if such materials
3 contain Protected Material. Any such archival copies that contain or constitute Protected
4 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6 Dated: September 17, 2010

7 LARIVIERE, GRUBMAN & PAYNE, LLP

8 By: /s/ Scott J. Allen

9 Scott J. Allen

10 Attorneys for Plaintiff/Counter-Defendant

11 Dated: September 17, 2010

12 REED SMITH LLP

13 By: /s/ James A. Daire

14 James A. Daire

15 Attorney for Defendants/Counterclaimants
16 Ricon Corp. and Westinghouse Air Brake
17 Technologies Corporation dba Vapor Bus
18 International

19 **AS MODIFIED BY THE COURT,**
20 PURSUANT TO STIPULATION, IT IS SO ORDERED.

21 ^

22 Dated: September 20, 2010

23 Hon. ~~Lucy H. Koh~~ Howard R. Lloyd

24 United States District Court Judge

25 Magistrate

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on _____ [date] in the case of Lift-U, a Division of Hogan Mfg., Inc. vs. Ricon Corp., Westinghouse Air Brake Technologies Corporation dba Vapor Bus International, U.S. District Court, Northern District of California, Case No.: 5:10-cv-01850 (LHK). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]